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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,463	08/25/2001	Raymond Anthony Joao	RJ275	3660
7590	07/06/2005		EXAMINER	
RAYMOND A. JOAO, ESQ. 122 BELLEVUE PLACE YONKERS, NY 10703			GRAYSAY, TAMARA L	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/939,463	JOAO, RAYMOND ANTHONY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tamara L. Graysay	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 August 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
  
2. The disclosure is objected to because of the following informalities:
  - a. Page 45, line 11, third generation should be spelled out at least at the first occurrence of the abbreviation 3G.
  - b. Page 46, last paragraph, and page 48 lines 6-8, the terms "elections administrator" and "elections commission" are repeated unnecessarily.
  - c. Page 68, line 15, the acronym TCP/IP should be spelled out at least at its first occurrence.
  - d. Page 143, lines 7-11 contains a grammatical error: "to make the results of the ... to any respective users"

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 7 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

For a process to be statutory, it must be limited to a practical application in the technological arts.

A practical application is one that is useful, concrete, and tangible. The process for providing information includes the steps of generating and transmitting an information report in response to a receiving a request for information. However, the information is not concrete and tangible, but rather is a “transmission” of data.

Regarding the technological arts issue, the only possible technology recited in the process claim is the communication device to which the information report is transmitted. This recitation is not enough. The transmission of information to a communication device is not a post-computer activity because it constitutes nothing more than reading out the result of the information generated. The transmission step does not require any particular structural or functional relationship with the communication device.

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 10-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10, line 2, the recitation “can be” is indefinite insofar as the claim is not clear whether the apparatus is being further modified to include the limitation of at least one of

programmable and self-activating because it recites what “can be” not what is the apparatus. The term “can be” does not clearly set forth the metes and bounds of patent protection desired.

Similarly, claims 11-19, the recitation “can be utilized” is indefinite insofar as the claims are not clear whether the apparatus is being further modified to include the recited limitations because they recite how the apparatus “can be utilized” not what is the apparatus. The term “can be utilized” does not clearly set forth the metes and bounds of patent protection desired.

Claim 20, the recitation of “a communication” and “a transmission” occurring in conjunction with use of the apparatus is indefinite because the claim preamble is drawn to the apparatus, not a process of using the apparatus. Therefore, the communication and transmission limitation(s) in the body of the claim that is conditional on “use of said apparatus” renders the claim indefinite. The metes and bound of patent protection desired is not clearly set forth such that one of ordinary skill in the art would be able to make and/or use the invention.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1-6 and 8-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Chisholm (US-5400248).

Chisholm discloses a computer (voting units 28) inherently comprising a memory, receiver, processor, and transmitter. Nonfunctional descriptive material, i.e., compilation of

data, cannot render nonobvious an invention that would have otherwise been obvious. In re Ngai, 70 USPQ2d 1862 (CAFC 2004). In the present application, the claimed “information” (including compensation, recruitment, etc.) is nonfunctional descriptive material. As such, it cannot render nonobvious the claimed apparatus. Further, the recitation of “can be” and “can be utilized” have not been given patentable weight because the limitation is not a positive structural limitation of the claimed apparatus.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gralla (book, How the Internet works) in view of Strummer (article, Democrat network launch online campaign center).

Regarding claim 7, Gralla discloses a process by which the Internet operates. The process steps of storing precede receiving a request for information and the information would be generated and transmitted in response to the request for information.

Strummer teaches a method for providing campaign information (video presentations and receipt of campaign contributions) comprising storing campaign information (video presentations for candidates), receiving a request for information regarding a candidate (current endorsed candidates), processing the request for information (video presentation, campaign

contribution), generating an information report in response to the request for information (visitors the site view streaming video), and transmitting the information to a communication device in order to permit voters to view the candidate presentations and to collect online contributions.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gralla to include the particular campaign information, as suggested by the online campaign center of Strummer, in order to solicit contributions and to permit voters to view the candidate presentations.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- TIAA-CREF teaches online ballots and financial information that is exchanged with customers. The online materials supplement online voting. The customers receive notification including e-mail with a hyperlink to the voting site.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is (571) 272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tamara L. Graysay  
Examiner  
Art Unit 3623

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